

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.22400/2001

(From the judgement and order dated 06/11/2001 in CMA 55502/01
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

KALLO @ KALAWATI

Petitioner (s)

VERSUS

PYARI BEGUM & ANR.

Respondent (s)

(With prayer for interim relief)
(With I.A. No.1 - appln. for exem. from filing O.T.)

Date : 12/08/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s) Mr. Manoj Saxena,Adv.
Mr. Prabirananda Chowdhary,Adv.

For Respondent No.2: Dr. Aparna Bhardwaj,Adv.
Mr. Rajesh Tyagi,Adv.
Mr. Praveen Jain,Adv.

UPON hearing counsel the Court made the following
O R D E R

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.SP2

Learned counsel for the parties argued for about
five minutes.

Leave granted.

The appeal is allowed in terms of the signed order.

No costs.

.SP1

(Neena Verma)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4950 OF 2002@@
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(@ Special Leave Petition (C) No.22400 of 2001)

Smt. Kallo @ Kalawati Appellant

Versus

Smt. Pyari Begum and Anr. . . . Respondents

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J
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Leave granted.

The present appeal has been filed against the impugned order of a learned single Judge of the High Court of Allahabad dated 06.11.2001 in Civil Misc. Application No.55502 of 2001 in Civil Misc. Writ Petition No.21095 of 1986 whereunder while restoring the writ petition for hearing by recalling the earlier order dated 25.04.2001 dismissing the same for default, it was further ordered that the stay order is not restored. While entertaining the special leave petition, and issuing notice, this Court, on 09.01.2002, after noticing the statement of the learned counsel for the appellant in this Court that the appellant is still in possession, ordered that "status-quo as to possession as of today shall be maintained". The respondents have been served, but only the 2nd respondent ..2/-

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: 2 :

has entered appearance through counsel and filed the counter opposing the claim made in the special leave petition.

Heard the learned counsel appearing on either side. The learned counsel for the respondent-landlord strenuously contended that considering the fact that the order of eviction was passed as early as on 28.05.1985, there is no justification in the claim for continuing in possession by the appellant and that the High Court was well justified in not restoring the interim order of stay, earlier granted in the matter. We are unable to either accept the submission of the learned counsel for the 2nd respondent or approve of the approach and the order passed by the High Court declining to restore stay alone. Whatever may be need or justification for restoration of the writ petition, earlier dismissed for default, once the High Court records the view that the reason assigned for seeking restoration is 'sufficient' for restoration, it should ordinarily and invariably, though not as an inviolable rule follow that the possession of the writ petitioner, which has been earlier protected by the grant of stay of dispossession should also continue to be protected pending disposal of the main writ petition unless there is any special or exceptional reasons to refuse to continue the benefit of stay already ...3/-

granted. Otherwise, it will lead to an anomalous situation and unnecessary multiplication of proceedings, when relief is granted in the main writ petition. It would also result in denial of the full fruits of restoration of the writ petition, ordered by the Court. Nothing has been stated in the order as to why the benefit of stay earlier granted, should be denied. Therefore, the claim of the appellant deserves to be sustained, subject of course to the conditions and terms subject to which the stay has been earlier granted by the High Court. Consequently, that part of the order, which declined to grant the restoration of the stay, pending disposal of the writ petition, is set aside. The status-quo with reference to possession, shall continue to be maintained. It shall be open to the parties to move the High Court for an early disposal of the writ petition which is of the year 1986. No costs.

.SP1

.....J.
 (DORAISWAMY RAJU)

.....J.
 (SHIVARAJ V. PATIL)

New Delhi,
 August 12, 2002.